

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In Re:)	Case No. 96-30469
)	Chapter 13
PATRICIA R. JONES,)	
)	
Debtor.)	
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ORDER

This matter comes before the Court on the Objection to Confirmation and Motion to Determine Claim filed by American General Finance ("American General") on May 16, 1996. The Trustee filed a response on June 10, 1996 and a hearing was held on the matter on June 11, 1996. Based on that hearing and the Court's records, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On June 12, 1995, the Debtor obtained a loan in the amount of \$7,644.00 from American General. The loan was evidenced by a Promissory Note executed on that same date.
2. This loan was to be secured by a security agreement conveying a security interest in the Debtor's Toyota Corolla as well as a Deed of Trust on her residence.
3. The Debtor filed her Chapter 13 petition under the Bankruptcy Code on March 27, 1996.
4. American General recorded its Deed of Trust on June 12, 1995, thereby perfecting a security interest in the Debtor's principal residence. However, American General had not received the Title to the Toyota Corolla showing its lien on the car as of

the filing date of the Debtor's bankruptcy petition. Therefore its security interest in the Toyota was not perfected as of the petition date.

5. The Debtor's Chapter 13 petition listed American General's claim as partially secured to the extent of the value of the Toyota, or \$5,100. A first Deed of Trust on the Debtor's principal residence in favor of Prudential Home was also listed on the Debtor's schedules. The debt secured by this first Deed of Trust is slightly less than the value of the property, according to the Debtor's petition. According to the Trustee's response to American General, there is sufficient equity in the residence to secure American General's debt in the amount of \$1,000.

6. At the first meeting of creditors, the Chapter 13 Trustee refused to include American General's claim as secured by the Toyota due to its failure to properly perfect its lien.

7. The Debtor's Chapter 13 plan proposes an approximate payout of sixty percent to general unsecured creditors, and confirmation was recommended by the Trustee following the section 341 meeting.

8. American General filed an objection to confirmation based on its assertion that (1) its debt is secured by both the automobile and the residence and so the secured claim in this case must be increased, or (2) its debt is secured only by the residence, and, as a result, its claim cannot be modified under section 1322(b)(2) of the Bankruptcy Code. In the latter instance, the claim would have to be treated as fully secured.

9. The Trustee filed a response to American General's objection arguing that, under North Carolina law, as of the date of the petition, and while its lien was not perfected in the vehicle, American General was nevertheless secured, as between itself and the Debtor, in both the Toyota and the residence. Therefore, the Trustee argued that American General was not secured "solely" by a security interest in the Debtor's principal residence for purposes of section 1322(b)(2) of the Code, and its claim could be modified. Further, the Trustee argued that despite this fact, the Trustee still retained the power to avoid American General's unperfected security interest in the Toyota under section 544 of the Code. As a result, the Trustee requested that American General only be allowed a secured claim in the amount of \$1,000, the available equity in the Debtor's residence after accounting for the first Deed of Trust.

CONCLUSIONS OF LAW

1. Section 1322(b)(2) of the Bankruptcy Code provides that a Debtor's Chapter 13 plan may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence . . ." 11 U.S.C. § 1322(b)(2). Therefore, if American General's claim is found to be secured solely by the Debtor's principal residence, then its claim cannot be modified and its objection to confirmation must be sustained.

There is no dispute that American General's claim is properly secured by the Deed of Trust on the Debtor's residence. As a

result, the issue in this case is whether American General's claim was secured by both the Toyota and the Debtor's residence or solely by the Debtor's residence for purposes of section 1322(b)(2).

2. Generally, state law answers the question of whether a valid lien exists on certain property and as between certain parties. In re Martin Grinding and Machine Works, Inc., 793 F.2d 592, 594 (7th Cir. 1986), citing Butner v. United States, 440 U.S. 48, 54-57, 99 S.Ct. 914, 917-19 (1979). Under North Carolina State law, American General has a valid lien on the Toyota, which is enforceable against the Debtor.

Section 25-9-203 of the North Carolina General Statutes lists three factors which must be met in order to give rise to a valid security interest. First, the debtor must sign a security agreement which contains a description of the collateral. In the current case, the Debtor properly executed a security agreement describing the Toyota on June 12, 1995. Second, value must be given. Clearly, there is value in the Toyota. Third, the debtor must have rights in the collateral. In this case, the Debtor owned the Toyota. As a result, the three requirements of section 25-9-203 have been met and American General's debt was validly secured by the Debtor's Toyota as of the petition date. N.C.G.S. §25-9-203(1)(a)-(c).

3. However, the inquiry does not end there. American General never obtained the title to the Toyota showing a proper notation of its lien as required by section 20-58 of the North Carolina General Statutes. As a result, its security interest in

the Toyota is unperfected and can be defeated by the Trustee's strong arm powers under section 544 of the Bankruptcy Code. Therefore, the question becomes at what point in time the secured status of a claim should be considered to determine whether or not that claim is secured solely by a Debtor's principal residence under Code section 1322(b)(2). If American General's claim is to be determined as of the filing date, then it was secured by both the Toyota and the residence, and, as a result, its claim can be modified by the Debtor. However, if the claim is to be determined after the Trustee has exercised his avoidance powers, then it is secured solely by the residence and cannot be modified.

4. There is no controlling authority on this key issue. However, the Court finds the reasoning of the Bankruptcy Court of the Northern District of Indiana in In re Graham, 144 B.R. 80 (Bankr. N.D. Ind. 1992) to be persuasive on the point. Faced with a section 1322(b)(2) problem, the Graham court stated that whether or not a trustee may be able to avoid one of a secured creditor's liens under section 544 is irrelevant for the purposes of determining whether that creditor is secured solely by a lien on the debtor's principal residence. The Graham court also opined, " . . . whether or not a creditor holds liens on property other than real estate constituting the debtors' residence should be determined according to state law as of the date of the petition, independently of post-bankruptcy events." Id. at 84.

The Court finds the Graham court's reasoning to be particularly persuasive in this case. The rights of parties in a

bankruptcy case are generally determined as of the filing date. Moreover accepting American General's argument would reward it for its negligence by making that secured claim unassailable, whereas if it had perfected that lien it would be subject to modification and a write down of its secured debt. American General bargained for and signed a valid agreement with the Debtor for a loan secured by both the Toyota and the Debtor's residence. The fact that American General failed to properly perfect the lien on the Toyota should not prevent modification of its claim by operation of section 1322(b)(2).

As of the petition date, American General had valid, if unperfected liens on both the Toyota and the Debtor's residence. As a result, its claim can be modified by the Debtor's chapter 13 plan. Further, the Trustee's strong arm powers, under section 544, remain fully intact, with regard to American General's lien on the Toyota. If the Trustee defeats that lien, American General will only be secured by the Debtor's residence post-petition, without the benefit of section 1322(b)(2) protection. Therefore, American General's Objection to Confirmation of the Debtor's plan is overruled and the plan is confirmed as proposed.

IT IS SO ORDERED.

This is the 15th day of July, 1996.


United States Bankruptcy Judge